JD(SF)-10–06
Aberdeen, WA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

TWIN HARBORS GROUP HOME ASSOCIATION

and Case 19-CA-29717

WASHINGTON STATE COUNCIL OF COUNTY
AND CITY EMPLOYEES, AFSCME, AFL–CIO

Richard Fiol, and Frank Morales, Attys.,
NLRB Region 19, Seattle, WA, for the General Counsel.

J. Markham Marshall, and Karen Valaas, Attys.,
(Lane Powell, P.C.) Seattle, WA, for Respondent.

David M. Kanigel, Atty., Everett, WA, for Washington State
Council of County and City Employees, AFSCME, AFL-CIO.

DECISION

Statement of the Case

WILLIAM L. SCHMIDT, Administrative Law Judge. Twin Harbors Group Home Association (Twin Harbors or Respondent) contends that the Board lacks statutory jurisdiction here either because it is an exempt political subdivision under tests established by *NLRB v. Natural Gas Utility District of Hawkins County, Tennessee*, 402 U.S. 600 (1971), or because its "operations do not 'affect commerce' in a legally sufficient sense." The General Counsel disputes the political subdivision claim, and asserts that Respondent is an employer subject to the National Labor Relations Act (Act) which otherwise meets standard jurisdictional tests applied to enterprises of this nature. The General Counsel also avers that Respondent violated Section 8(a)(5) of the Act by unilaterally increasing the portion of the monthly medical insurance premium paid by employees by $15 commencing in January 2005. Even assuming that it is subject to the Act, Respondent asserts that it gave Washington State Council of County and City Employees, AFSME, AFL–CIO (Union), the certified employee representative, timely notice of the increase but the Union waived its right to bargain over that subject.

The Union initiated the case by filing an unfair labor practice charge on April 4, 2005, alleging Respondent violated Section 8(a)(1), (3), and (5) of the Act. Based on that charge, the Regional Director for Region 19 of the National Labor Relations Board (Board) issued a formal complaint on June 29 alleging that Respondent violated Section 8(a)(1) and (5) of the Act by increasing its employees' medical insurance premiums without sufficient prior notice to afford the Union with an opportunity to meaningfully bargain about the increase or its effects. Respondent timely answered denying any unfair labor practice occurred and interposing certain affirmative defenses pertaining to its claims about the Board's lack of jurisdiction.

I conducted this hearing on September 29, 2005, at Seattle, Washington. All parties had the full opportunity to call and examine witnesses, to introduce relevant documentary evidence, and to argue procedural and substantive issues orally. Having now considered the entire record, including my own impressions about the demeanor of the witnesses, and the briefs filed by the General Counsel and Respondent, I conclude that Respondent is an employer within the meaning of Section 2(2) of the Act which meets existing jurisdictional standards, and that it violated the Act as alleged based on the following

Findings of Fact

I. Jurisdiction

At all relevant times Respondent, a non-profit Washington corporation with offices and places of business in Hoquiam, Cosmopolis and Aberdeen, Washington, provided residential care services to developmentally disabled adults. In the twelve-month period prior to the issuance of the complaint, Respondent derived gross revenues from its business operations which exceeded $500,000, and purchased and received goods valued in excess of $17,000 from suppliers within the State of Washington, which suppliers, in turn, purchased those goods directly from sources located outside the State of Washington.

Historically, Washington territorial and state governments have aided the developmentally disabled. Since the territorial government opened an institution for developmentally disabled children in 1886, the forms of state assistance have changed dramatically. Over the last few decades, Washington, like many other states, steadily adopted policies that stressed home-based care, or care in local, small-group home settings while it reduced the delivery of such care in large, institutional settings. Today, according to the Washington State Department of Social & Health Services (DSHS), the care of the developmentally disabled amounts to "a complex web of services and supports funded by federal, state and local governments, and provided mostly by family members, public schools, individual care givers and private and non-profit agencies . . . that [help developmentally disabled] people throughout their lives." This government financed and regulated web seeks to deliver some level of support for the developmentally disabled "from infancy through old age."[1] RExhibit 4: 1-2.

The trend in the State of Washington toward local and home-based care of the developmentally disabled began in 1972 when the state legislature passed and the voters adopted an initiative measure known as Initiative 29. Initiative 29 authorized the state finance committee to issue $25,000,000 in general obligation bonds for the purpose of raising funds to plan, acquire, construct and improve health and social service facilities in Washington pursuant to a comprehensive prepared by DSHS.

Acting on the DSHS plan, a group of citizens in Grays Harbor County, Washington, concerned with the developmentally disabled launched a fundraising campaign to acquire the 25% share required to obtain state and federal funds to build a local group home for the developmentally disabled. Core members of this group incorporated the Twin Harbors Group Home Association as a private non-profit corporation in mid-1976. Because the DSHS' Initiative

[1] In its brief, Respondent alludes to Washington's developmentally disabled as "wards of the state." RBrief: 11, fn. 4. I find it arguable that all such individuals would fall into such a category particularly where, as here, DSHS reaches only about 35% of the state's estimated 100,000 developmentally disabled citizens through its entire range of services. RExhibit 3: 3.

29 plan required a governmental "sponsor" for the establishment of local facilities required a governmental sponsor, Twin Harbors entered into an agreement with Grays Harbor County in mid-1977 under which it agreed to serve as the "contractor" to construct and operate a group home for the developmentally disabled in Aberdeen, Washington, which would be sponsored by that county. As a part of the agreement, Twin Harbors deeded the land on which the group home was eventually constructed to the county. Twin Harbors then constructed a 4000 square foot group home originally designed to house ten individuals with a combination of funds from Initiative 29, a one-time county grant, and private funds raised by local citizens.[2] Eventually named Kimberly Home after the daughter of Jean Logston, Twin Harbors' first (and current) president who has actively worked on behalf of the developmentally disabled for many years, the group home currently houses 8 clients and Twin Harbors' office.[3]

In 1979, the voters of Washington passed Initiative 37, a bond measure that provided funds for the operation of local facilities. The Division of Developmental Disabilities (DDD) within DSHS administers the state's programs designed to provide supportive living services and group home services. In addition, DDD also operates the state's six remaining institutions for the developmentally disabled. Those institutions are staffed by DDD workers employed under the state's merit system. Private contractors such as Twin Harbors operate the local group home facilities and provide the other supportive living services pursuant to community residential service contracts with DSHS. Currently, DSHS has approximately 150 community service contracts with about 80 separate contractors, all of whom have been certified by DDD as qualified providers of services for developmentally disabled persons.

Although Twin Harbors and other contractors handle all aspects of staffing, including the hiring, setting wage scales, establishing benefit programs, training, disciplining and discharge functions, the community service contracts between DSHS and the service providers incorporate the Washington Administrative Code, certain DSHS regulations, and various DDD policies. For this reason, all DSHS contractors must conform to these rules guidelines or risk decertification by DDD. For example, contractor employees who will have unsupervised access to a developmentally disabled person must pass a DSHS background check. Staffers who fail the background check must be removed from unsupervised access. As a practical matter, that means employees of small contractors such as Twin Harbors face almost certain termination. Even though the contractor could retain the employee in some other position that lacks unsupervised access, it would risk decertification and the loss of its contract if DDD became aware that the individual continued to have unsupervised access to clients. Other DSHS regulations have a broader leeway. Thus, rules requiring contractor administrators to have college degrees have been waived in certain instances, including the one at Twin Harbors. Service providers must give notice to DDD of any serious breach of rules relating to client care by their staff members and provide DDD with its plan for corrective action.

Twin Harbors' statement of policies and procedures states that it is a "Washington residential service provider dedicated to the creation and maintenance of community based residential living arrangements for persons with developmental disabilities." Its declared mission is "to support persons with developmental disabilities in ways that allow them to enjoy the same valued life experiences as persons without disabilities, while living as independently

[2] The term of the agreement was for one year but, as its terms permit, it has been automatically renewed each year since. Under the agreement, the county has title to the group home but contributes no funds for its operation or physical maintenance.

[3] An apartment was added to the original home in the 1980s which increased its capacity to 12 clients. However, Twin Harbors currently uses that apartment for its office space.

as possible in his/her chosen community." In addition to being bound to various governmental rules and policies by way of contract, Twin Harbors maintains its own extensive policies and procedures applicable to the staff and its clients. The Twin Harbors' board of directors hires the administrator who oversees its entire operations on a day-to-day basis. It also employs a program coordinator who manages the client services and ensures that each client has access to the instruction and support they require. The office manager or administrator is the only other administrative employee at Twin Harbors. Its remaining employees consist of the residential support staff (the unit employees) and their supervisors.

In addition to operating the Kimberly Home, Twin Harbors also provides supported living services for the developmentally disabled who reside in their own homes, sometimes referred to as Intensive Tenant Support (ITS) homes. Currently Twin Harbors provides supported living services at three ITS homes rented by developmentally disabled persons. Four clients reside in each of these homes. Twin Harbors provides a staff member twenty-four hours a day at each location. Eight clients currently reside at the Kimberly Group Home. The selection of clients and their placement in one or the other types of living arrangements available is a joint decision made by a DDD case resource person, the client and the client's family, and the Twin Harbors staff. Following placement, a DDD case resources person regularly visits with clients at their living facility to assess whether their needs are being met.

Twin Harbors derives most of its income by way of the payment schedule contained in its community residential services contract with DSHS. However, DDD sets the actual amount of this payment based on its determinations about the level of service required by each disabled person. A daily rate applies to each disabled person based on their support needs. The daily rate has two components. The administrative component comprises 15 to 20 percent of the rate and covers administrative salaries, office rental, and similar expenses unrelated to providing direct services for the disabled person. DDD determines the rate for the second or direct service component by multiplying the number of service hours required by the disabled person by the benchmark rate contained in the community residential services contract. Clients at Kimberly Home and the ITS residences receive support from Twin Harbors on a daily, twenty-four hour basis and provides DDD with a staffing schedule reflecting that support.[4] Twin Harbors bills DSHS monthly for the services provided.

At the end of each fiscal year, DDD completes a settlement process with each of its service providers. This process requires that the service providers submit a cost report showing that they have used all of the money provided for direct services.[5] If that money has not been used, it must be returned to the State of Washington. In anticipation of this settlement process, most service providers, including Twin Harbors, pay employees a "bonus" in order to use up any excess funds that would have to be returned through the settlement process. In addition, clients residing at Kimberly Home who receive Supplemental Security Income (SSI) payments pay all but $38.84 of their monthly stipend to Twin Harbors as room and board.[6] Twin Harbors' income from private gifts or donations amounts to an insignificant portion of its income.

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[4] The staffing schedule submitted to DDD reflects only the hours when service is provided at each location. It does not include the names of any staff member on site.

[5] The compensation service providers receive for their administrative costs unrelated to direct client care is not included in this settlement process.

[6] DDD sets the amount that clients may retain from their monthly SSI payment. As clients at the ITS homes pay rent to their own landlord and provide their own board, Twin Harbors does not receive any portion of their SSI payment.

Section 2(2) provides that the term employer as used in the Act "shall not include . . . any State or political subdivision thereof . . . ." As noted, Respondent claims that it is an exempt political subdivision under *Hawkins*. That case established a two pronged test for use in determining whether an entity constitutes a political subdivision exempt from the Board's jurisdiction. To qualify for the exemption, the entity must show that it is either: (1) created directly by the state so as to constitute a department or administrative arm of government; or (2) administered by individuals who are responsible to public officials or the general public.

Respondent claims that it meets both of the *Hawkins'* tests. Its brief asserts that Twin Harbors "was created directly as the result of state referenda 29 and 37," the 1970s' bond measures that made public funds available to "public bodies" for the creation and operation of community-based facilities to care for the developmentally disabled. In addition, Respondent asserts that "[t]here are abundant facts here, showing that Respondent's management is 'responsible to [the] public officials' managing the DSHS." "[S]tate regulations," Respondent argues, "demonstrate that the DSHS/DDD evaluates the quality of the performance of Respondent and its employees."

The General Counsel disputes both claims. The state initiatives, the General Counsel argues, did not create Twin Harbors or any other private service providers who serve Washington's developmentally disabled. Likewise, the General Counsel contends that Twin Harbors is administered solely by its Board of Directors, the Administrator, and its supervisors.

I concur with the General Counsel's position and conclude that Twin Harbors is not an exempt political subdivision under Section 2(2). In my judgment, Respondent has failed to meet either of the *Hawkins'* criteria. Twin Harbors is one of numerous contractors with whom DSHS does business in order obtain services required for the developmentally disabled. Section 2(2) exempts only government entities or wholly owned government corporations and not private entities acting as contractors for the government. *Aramark Corp. v. NLRB*, 179 F.3d 872, 878 (10th Cir. 1999), citing *Teledyne Econ. Dev. v. NLRB*, 108 F.3d 56, 59 (4th Cir. 1997).

Even though, as Respondent argues, the establishment of Twin Harbors may have received substantial impetus from the two state bond initiatives, no evidence shows that its creation came about as the result of any enabling legislation. Instead, as shown by its articles of incorporation and other evidence, a group of private individuals created Twin Harbors pursuant to the Washington Non-Profit Corporation Act, a statute of general application. The creation of Twin Harbors by private individuals as a private corporation without any state enabling action or intent leaves it outside the ambit of the Section 2(2) exemption.[7] *Research Foundation of the City Univ. of NY*, 337 NLRB 965, 968 (2002).

In addition, the fact that Twin Harbors' formation came about for the purpose of serving the developmentally disabled, a function historically performed for the most part by the State of Washington at institutions it alone operated, does not transform its character from a private to a public entity. This is particularly true where, as here, Respondent derives its client care

[7] I find *Hinds County Human Resource Agency*, 331 NLRB 1404 (2000), cited by Respondent, factually distinguishable. In that case, the Board applied a long-established principle of recognizing entities created by a county government pursuant to a state enabling statute as having been "directly created by the state." Since a state enabling statute existed that specifically authorized counties and municipalities to create human resource agencies, the Board found the entity created by Hinds County exempt under Section 2(2). Here, private individuals created Twin Harbors without the benefit of a similar enabling statute.

responsibilities solely from its contracts with Grays Harbor County and DSHS. As with the situation in *Truman Medical Ctr., Inc. v. NLRB*, 641 F.2d 570 (8th Cir 1981), a case with fact substantially more compelling than those present here, the court concluded that a privately formed entity (Truman Medical Center (TMC)) did not become an exempt political subdivision even where it "assumed the statutory responsibilities of [local governments] for medical care of indigents" because it did so through a series of contracts which provided for the operation of city and county hospitals by TMC without any statutory duty being imposed on TMC itself.[8]

Usually, the Board finds a political subdivision exemption exists where a majority of the entity's board of directors is shown to be "responsible to public officials or to the general electorate." *Economic Security Corp*., 299 NLRB 562, 565 (1990). Here, Respondent's board of directors amounts to a self-perpetuating body of private individuals. Currently no public official sits on the board and the presence of any public official on that body in the future would be only a mere coincidence. Furthermore, as noted in *Truman Medical Ctr*., contractually-derived responsibilities "is not the sort of direct personal accountability to public officials or to the general public required to support a claim of exemption under Section 2(2)." 641 F.2d at 573. Here, the responsibility on which Respondent rests its case for an exemption is derived entirely from its contractual relationships with DSHS and Grays Harbor County rather than any direct personal accountability to public officials or to the general electorate.

Finally, I have concluded that Respondent's claim that the Board lacks jurisdiction over its operation because they "do not 'affect commerce' in a legally sufficient sense," also lacks merit. Twin Harbors stipulated that its gross volume of business and indirect inflow exceed the amounts used by the Board to assert its statutory jurisdiction. However, the volume of commerce affected in any individual case is not the relevant consideration. In determining its jurisdiction, the Board does not confine its judgment to the unique circumstance of each particular employer as Respondent's argument seems to contend. In *Polish National Alliance v. NLRB*, 322 U.S. 643, 648 (1944), Justice Frankfurter wrote: "Whether or no practices may be deemed by Congress to affect interstate commerce is not to be determined by confining judgment to the quantitative effect of the activities immediately before the Board. Appropriate for judgment is the fact that the immediate situation is representative of many others of which if left unchecked may well become farreaching in its harm to commerce." DSHS alone utilizes the services of 80 or so social services contractors in the State of Washington. Undoubtedly, legions of other similar contractors provide social services to virtually all state governments. Accordingly, it would be reasonable to infer that their activities, if left unchecked, could prove to be a substantial burden on commerce. [9]

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[8] TMC, organized as a not-for-profit corporation under the state's general not-for-profit law, was supposedly established "at the instance of the City of Kansas City" to take over the operation of the city's general hospital. Regardless, the court rejected TMC's claim to the Section 2(2) exemption because it was not created directly by the State so as to constitute a department or an administrative arm, nor was it administered by individuals responsible "in the required sense" to public officials or to the general public.

[9] Moreover, in *Electrical Workers IBEW Local 46 (PAC, Inc.)*, 273 NLRB 1357, 1358 (1985), an ALJ took judicial notice under Rule 201 of the Federal Rules of Evidence, that the State of Washington is directly engaged in commerce. Although the State of Washington itself is exempt from the Board's jurisdiction, the value of services a contractor provides to it may be considered for jurisdictional purposes. I find it unlikely that the State's involvement in commerce has been materially reduced since that time. Hence, Twin Harbors derives the vast majority of its income which exceeds $500,000 annually from services provided to an entity directly engaged in commerce. Viewed from this perspective, its potential for affecting commerce is significant.

For these reasons, I find that Twin Harbors is not an exempt political subdivision within the meaning of Section 2(2) of the Act. Rather, I find it to be an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, subject to the Board's jurisdiction. I further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Relevant Facts

As noted, Twin Harbors began providing services to the developmentally disabled of Grays Harbor County in 1979. The residential support staff employees selected the Union to represent them at an NLRB election held on January 14, 2004. The NLRB subsequently certified the Union as the exclusive representative on May 6.

Historically, Twin Harbors provided medical insurance free of cost to the residential support staff employees. However, in December 2003, Twin Harbor's insurance agent gave notice that the monthly premium per employee would increase from $291 to $329 per month. At that time the Twin Harbors Board of Directors decided it could no longer shoulder the burden to the medical insurance premiums alone so it notified employees that they would be required to pay $30 per month if they wished to continue their medical insurance policy. As this action took place in the midst of the Union's organizational campaign, the Union's organizer at the time promptly filed an unfair labor practice charge with the NLRB's regional office at Seattle. Subsequently, the Regional Director concluded that the Union had insufficient evidence to warrant the issuance of a complaint on this issue.

In mid-December 2004, Twin Harbors received a notice from its insurance agent that the monthly premium would increase another $58 per month for calendar year 2005. Twin Harbors' administrator, David Hoffman, immediately took the increase up with the Board of Directors. The Board decided to increase the portion of the medical insurance premium paid by employee to $45 per month, an increase of $15 above that which they paid in 2004.

Hoffman promptly set about giving notice of the Board's action concerning the medical insurance premium. Thus on December 17, 2004, he sent a memo to the employees telling them that if they wished to continue their medical insurance, they would be "required to pay an additional $15.00 per month, for a total of $45.00 per month toward their personal coverage and 100% of dependent coverage." The memo further advised employees that their insurance would be cancelled if they failed to return a signed authorization for the increased payroll deduction by December 30. In addition, Hoffman sent a letter dated December 17 to Union agent Kathy Brown giving her notice that the medical insurance premium had been increased. He then added:

> Twin Harbors Group Home Association will not be able to absorb this increase. Therefore, employees will be required to pay an additional $15.00 per month toward the cost of their insurance.
>
> We will be including an authorization for payroll deduction with all employees' paychecks on December 20, 2004. Employees will be given the option of increasing their payroll deduction or if they choose, terminating their insurance. All payroll authorizations must be returned no later than December 30, 2004, for continuing coverage of medical insurance.

Hoffman's letter arrived in Brown's office during her holiday vacation period. She first saw the letter when she returned from her vacation on January 3, 2005. Prior to receiving Hoffman's letter, Brown had no knowledge that Twin Harbors planned to increase the employee share of the medical insurance premium. After receiving Hoffman's letter, Brown researched the disposition of the prior NLRB charge related to the medical insurance premium and sought to determine if Twin Harbors could increase the premium without negotiating that subject with the Union.

In the meantime, the parties held their first bargaining session on January 19. This session amounted largely to a pro forma presentation of the Union's initial proposal and a review of its terms item by item. Although the Union's proposed contract contained a provision seeking to have Twin Harbors pay the entire medical insurance premium, neither party mentioned the most recent premium increase addressed in Hoffman's December 17 letter.

A month later, Brown sent Hoffman a letter acknowledging receipt of his December 17 letter and advising that she also knew of the notice sent to employees on the same date warning that their medical insurance would be cancelled if they failed to submit a new authorization permitting an increased deduction for the employees' share of the premium. Brown proposed to bargain about that change. She also demanded that Twin Harbors immediately return any amounts already deducted from the employees' pay for this purpose and allow participation again by any employees forced to terminate their medical insurance because of the 2005 premium increase until "this issue has been negotiated."[10] Additionally she requested that Twin Harbors maintain all wages, benefits, and working conditions "until we have negotiated our collective bargaining agreement."[11]

On March 1, Hoffman responded to Brown's letter. He asserted that no change had been made to the "medical insurance benefits provided employees." He also asserted that "[t]he same issue regarding changes in the medical insurance was raised by the Union last year, and the National Labor Relations Board . . . determined that Twin Harbors . . . had acted properly, by extending to Union-represented employees the same medical insurance coverage extended to other employees, including management."

Before the month ended, Brown filed the unfair labor practice charge in this case alleging that Twin Harbors refused to bargain about the employee share of the 2005 increase in the medical insurance premium.

B. Further Findings and Conclusions

Section 8(a)(5) of the Act specifies that an employer's refusal to "bargain collectively" with its employees' certified representative constitutes an unfair labor practice. The duty to bargain collectively encompasses negotiating with the employee representative about mandatory subjects of bargaining. *NLRB v. Katz*, 369 U.S. 736, 743 (1962). The scope of employer-provided medical insurance and the allocation of premium costs constitute mandatory subjects of bargaining. *Mid-Continent Concrete*, 336 NLRB 258, 259 (2001). Where, as here, the parties were about to commence negotiations for their initial collective bargaining agreement, Respondent would ordinarily be required to refrain from implementing any changes

[10] No evidence shows whether or not any employee dropped their insurance coverage because of the January 2005 premium increase.

[11] Brown also inquired about a year-end bonus but that matter is not involved in this case.

in employee wages, hours, and other terms and conditions of employment, absent an overall impasse in bargaining unless economic exigencies compelled prompt action or the Union avoided or delayed its requests to bargain. *Register Guard*, 339 NLRB 353, 354 (2003).

In *Stone Container Corp.*, 313 NLRB 336 (1993), the Board concluded that the employer satisfied its duty to maintain the status quo even though it made certain changes before it reached an agreement or an overall impasse with in bargaining because the changes accorded with an established past practice. Later, in *Nabors Alaska Drilling*, 341 NLRB No. 84 (2004), the Board affirmed an ALJ's conclusion that "bargaining over the [annual] changes in health insurance could not await an impasse in overall negotiations" and that the employer satisfied its bargaining obligation by offering to meet for the purpose of bargaining about the particular changes contemplated.

But here, the December 17 notices Twin Harbors gave employees and the Union presented the premium change as a *fait accompli*. As Hoffman's subsequent rejection of the Union's request to bargain made that absolutely clear, I find Twin Harbors' refusal to negotiate concerning the premium allocation made in December 2004 violated Section 8(a)(5). *Brannan Sand & Gravel Co*., 314 NLRB 282 (1994) (unilateral implementation of changes in health plan terms and premiums charged to employees unlawful where presented as a *fait accompli*). Finally, because Twin Harbors' presented the December 2004 change initially as a *fait accompli,* the Union cannot be said to have waived its right to bargain about the matter.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As Respondent violated the Act by unilaterally increasing the medical insurance premium amount allocated for payment by employees, it will be required to restore the status quo ante. *Larry Geweke Ford*, 344 NLRB No. 78 (2005). Accordingly, Respondent will be required to rescind the premium increase allocated to unit employees for the 2005 calendar year and reimburse them for the amounts withheld from their pay for that purpose. In addition, Respondent will be required reimburse unit employees who dropped their medical insurance due to the 2005 premium increase allocated to them for any benefits they would have received under the medical insurance plan thereafter. Reimbursements to employees shall be computed as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

Respondent, Twin Harbors Group Home Association, its officers, agents, successors, and/or assigns, jointly and severally, shall

[12] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from:

(a) Refusing to bargain with the Washington State Council of County and City Employees, AFSME, AFL-CIO (the Union), by unilaterally increasing the portion of the medical insurance premiums that must be paid by its residential support staff employees without first providing the Union with adequate notice and an opportunity to bargain about such increases.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days from the date of the Board's Order, rescind the $15 per month increase in medical insurance premiums paid by its residential support staff employees which it implemented in December 2004.

(b) Reimburse its residential support staff employees for the amounts withheld from their wages to pay for the increase in the portion of the medical insurance premium allocated to them for the 2005 medical insurance year as specified in the Remedy section of this decision.

(c) Reimburse employees who dropped their medical insurance due to the 2005 premium increase allocated to them for any benefits they would have received under the medical insurance plan thereafter as specified in the Remedy section of this decision.

(c) Within 14 days after service by the Region, post at its facilities in Grays Harbor County, Washington, copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 17, 2004.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. February 16, 2006

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Administrative Law Judge

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain collectively with WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, COUNCIL 2, AFSCME, AFL-CIO (Union) by unilaterally increasing the portion of our medical insurance premiums paid by our residential support staff employees without affording the Union adequate notice and opportunity to bargain:

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, rescind the 2005 increase in the medical insurance premiums withheld from the wages of the residential support staff employees.

WE WILL reimburse our residential staff employees for amounts withheld from their wages to pay for the portion of the 2005 medical insurance premium increase allocated to them, and **WE WILL** reimburse any residential staff employee who dropped their medical insurance plan due to the premium increase allocated to them for the 2005 insurance year for any benefits they would have received under the plan.

TWIN HARBORS GROUP HOMES ASSOCIATION

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

915 2nd Avenue, Federal Building, Room 2948
Seattle, Washington 98174-1078
Hours: 8:15 a.m. to 4:45 p.m.
206-220-6300.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 206-220-6284.